

4th. Mr. Bloyed asked if Economic Development moves into that office if the rent and utilities would still be free. Mrs. Shank stated that they would.

PUBLIC HEARING: BLACK ROCK CITY, LLC (2012 BURNING MAN EVENT) APPLICATION FOR PERSHING COUNTY OUTDOOR ASSEMBLY LICENSE; APPROVAL OF PERSHING COUNTY OUTDOOR ASSEMBLY LICENSE FOR BLACK ROCK CITY, LLC (2012 BURNING MAN EVENT) – Sheriff Machado and Mark Vorderbruggen were also present.

Mr. Shirley stated that the first thing he wanted to discuss was the Law Enforcement budget. Mr. Shirley stated that one of the issues that they ran across was that they had not included Worker's Compensation or FICA with the wages. Mr. Shirley presented the Board with some information regarding the classification of contract law enforcement personnel. The Board was also given a two page budget that Mr. Shirley presented.

In regards to the application, Mr. Shirley discussed what was covered per NRS. Mr. Shirley stated that the Plans of Operation for Water Facilities, Food Concessions, Sanitation Facilities, Medical Facilities, Parking Areas, Hours of Operation, Illumination, Overnight Camping Facilities, Communication and Fire Protection were submitted to the BLM and a copy of that document was attached to the County's application. Mr. Shirley suggested that the Fire Protection plan be given to Chief Rasco so he can submit any input. Mr. Shirley also stated that they would need to apply for a Fireworks Permit through the County Clerk's office. Mr. Shirley stated that they must comply with NRS 244.3548 (3-8) and it must be interpreted in conformity with the definitions and constraints imposed by both the United States and the Nevada Constitutions. The Board of County Commissioners authorizes the consumption and possession of intoxicating liquor at the 2012 Burning Man Event subject to compliance with the provisions regarding possession and or use by an individual under the age of 21 years. Black Rock City will not knowingly allow the possession and use of any controlled substances at the 2012 Event and will make attempts to curb such illegal activity.

In regards to the Sheriff's Law Enforcement budget, the Commissioners established that the minimum staffing levels for Outdoor Events beginning October 1, 2012 is one law enforcement officer per every 500 attendees. Mr. Shirley referred to a recent event that occurred in Pyramid Lake and they had one officer per 200 attendees.

Mr. Shirley stated that the application indicates that ticket sales for the 2012 Event began in November 2011 and 58,000 tickets have been sold with an additional 500 tickets being given away. Mr. Shirley stated that he would like to note that in previous years, in an attempt to minimize costs, staffing levels were agreed to that were far less than what is required by most counties in the State of Nevada for such an event. Sheriff Machado has proposed 44 officers for this year's event as to not burden Black Rock with the increase that will be required in the Ordinance that takes effect in October.

Mr. Shirley discussed the \$10,000 contingency fee that has been included in previous contracts. During negotiations they discussed increasing that contingency to \$20,000. Mr. Shirley stated that there needs to be a refund clause if funds are not expended during a designated time frame. He is proposing that the contingency fee be refunded in mid-September. Mr. Shirley also discussed prosecution costs for the District Attorney's Office, the Public Defender's Office, the Justice Court and the District Court. Mr. Shirley is proposing a monetary condition of \$25,000, which could be refunded if funds were not exhausted. The County is also proposing a \$5,000 payment to cover administrative costs for the Recorder-Auditor's Office and the Clerk-Treasurer's Office.

Mr. Shirley stated that two of the concerns in Mr. Gross's email were the amount of the Law Enforcement contract and paying for County staff in the various offices that provide

services for Burning Man. Mr. Shirley stated that if Burning Man wasn't here, the staff would be spending time on other County business. This is asking Pershing County taxpayers to subsidize the additional work because of Burning Man.

Mr. Irwin asked for any public input.

Rebecca Gaska stated that she is no longer with the ACLU, but has a personal concern as a participant of the event regarding the increase of law enforcement presence. She also stated that she hoped those officers receive the proper training regarding the 4th Amendment.

Terry Gross, General Council for Black Rock City, LLC, addressed a letter sent to the Commission on May 25, 2012. BRC believes that the County Festival Ordinance cannot be applied to BRC. BRC feels they have no other options, but to apply for the Event License as the District Attorney has threatened criminal action. Another reason is they have already sold millions of dollars' worth of tickets and is contractually obligated to hold the event.

There was some disagreement in regards to whether BRC was applying for a license under the County's current Festival Ordinance or if NRS was being applied. Mr. Gross felt the provisions under NRS apply to festival ordinances.

Mr. Gross stated that the Plan of Operations submitted to the BLM should suffice the conditions of the application and a license should be granted. Mr. Gross questioned the license fee of \$448,326.75 when the current Ordinance places a \$1 per person, per day fee. With the estimated population for this year's event, the County can only charge \$320,000. In regards to Conditions 3 and 4, BRC did not feel that they needed to provide any additional information to the Fire Chief or apply for a Pershing County Fireworks permit as they provide that information to the BLM. Ray Allen stated that they do apply for the County Fireworks permit; it just hasn't been a part of the contract. Mr. Gross also had an issue with the condition requiring them to comply with State Law as that is a given.

In regards to the Monetary Conditions, Mr. Gross stated that a lot of the costs in the Law Enforcement budget are equipment costs that should be amortized. BRC also doesn't believe they should pay for normal operating administrative costs. They also believe if they are charged for those costs there should be a provision in the agreement for refunding any unused portion. They also don't see the justification for increasing the prosecution costs or the emergency contingency amount. Mr. Gross stated that they do not see the need to place that money in an escrow account. They are also requesting that the payment be made in two payments, half in June before the event and the remainder in December after the event. Lastly, BRC would like a detailed accounting of all funds expended.

Mr. Gross stated that there is no justification for tripling the Law Enforcement costs. BRC would like information regarding how laws will be enforced differently so they can inform their participants of those changes.

Mr. Irwin stated that he believes they have no intent of changing the concept of how Law Enforcement performs. They have a job to do and will continue to do it.

Mr. Bloyed stated that BRC changing to a lottery system for the selling of their tickets will change the makeup of the event. There will be a lot more "burners" who will not be prepared, which will put Law Enforcement at greater danger. Mr. Gross stated that their statistics show that every year 25% of the participants are new and they don't foresee this changing.

Mr. Shirley stated that they did ask for a list of priorities and the Sheriff will have to work on those. The reason for the payment due dates being as they are is so the County isn't funding these expenditures. Mr. Shirley also stated that this also ensures that we can provide the necessary Law Enforcement services. He also stated that the County did not have a lot of time to review the application. Mr. Irwin stated that the provision regarding fire protection is a courtesy to the Fire Chief and the BLM could call us to assist at any time. Mr. Shirley stated that he also

knew that they had been applying for a fireworks permit and didn't feel that would be an issue to include it in the conditions. Mr. Shirley stated that the conditions to comply with State law are routinely included in these kinds of applications. Mr. Shirley asked if they were objecting to paying prosecution costs as well.

Mr. Allen stated that those costs were agreed to in the previous contracts. With the Board moving away from the previous contracts, they feel this changes what is reimbursable. Mr. Allen stated that prosecution costs are a normal part of County business. Mr. Shirley stated that if that is the case then employees will have to be specifically hired to deal with Burning Man issues so that the regular employees can continue handling regular county business.

Mr. Gross stated that Mr. Shirley interprets the law differently than BRC is interpreting the law. They feel that the County was getting more money from the previous contracts than they would under a license fee.

Mrs. Shank stated that they are always going to disagree. Mr. Shirley explained why the prosecution costs were increased to \$25,000. Mr. Shirley stated that the Public Defender costs and the costs of the District Court were never considered before.

Mrs. Shank wanted clarification from BRC that they were still willing to provide provisions under Monetary Condition #5 as they have provided those services in the past. It was stated that they are not in agreement with the provisions, but would continue to provide those services. Mr. Shirley stated that if they are not in agreement then those expenses will need to be added to the Law Enforcement budget. Mr. Gross stated that if those are the provisions of the license then they will follow them.

Mr. Bloyed thanked BRC for continuing to negotiate in good faith. With moving away from the previous agreements, it put everyone behind the eight ball. Tickets have been sold and a permit needs to be issued.

Mr. Irwin stated that the amendments to the Festival Ordinance will take affect October 1st and asked what their timeline would be for applying for their 2013 license. Mr. Gross stated that they would need to have the license approved by the end of November.

Will Roger Peterson wanted it to be clear that they did not do a ticket lottery. They do not like this language as lotteries are illegal in Nevada. They used a computerized random selection process. A large portion of tickets were withheld to be distributed to those who volunteer or bring other cultural importance to the event.

Mr. Shirley stated that the Commission has ten days to approve or deny the permit and there may be some conditions they want to review. Mr. Bloyed asked if an additional ten days would pose an imposition to BRC. Mr. Gross asked what the conditions were that needed to be looked at. Mr. Shirley stated that BRC had brought up the fact that we are not in compliance with the County's current Ordinance. He also stated that BRC disagreed with the amount of staffing. Mr. Gross asked if there was any way the Board could recess now so these issues can be addressed. Mr. Shirley stated that would be up to the Board.

Rick Elmore, another attorney for BRC, stated that there may be others in the audience who want to express their opinions. He is concerned that BRC has not been given Due Process. They have made an objection and have asked for justification regarding the significant increase to the Law Enforcement costs. He has not heard any justification except a comment that was made regarding the change in how tickets were distributed. Mr. Elmore stated that some evidence needs to be presented justifying the "three fold" increase in light of the history of the event.

Mr. Irwin and Mr. Bloyed both felt that justification has been given. Mr. Bloyed stated that if they want this to be continued for two more weeks they can do this. He expressed his agitation in regards to the months of communication that has taken place.

Mrs. Shank stated that they are looking at an increase to forty-four law enforcement officers. If you consider that this is a twenty-four hour a day event, forty-four officers to cover 58,000 people isn't asking a lot. Mrs. Shank stated that the County has failed to provide adequate law enforcement in the past. We had a new Sheriff last year who was instructed to keep his budget down and he feels he did not have adequate staffing. Mrs. Shank stated that they have had several conversations regarding this issue.

Mr. Shirley stated that BRC is entitled to a presentation of evidence at the hearing. Mr. Bloyed stated that they are not prepared to do that today.

Mr. Allen recommended taking fifteen to thirty minutes to negotiate before taking public comment. Mr. Irwin stated that normally they would hear the public comment first. Mr. Bloyed also stated that they would ask for public comment before a vote is taken.

Mr. Elmore stated that they had been working on a Law Enforcement agreement and they asked the same questions then regarding the increase. At this point, whatever the number is, BRC has no choice, but to pay. They don't have an additional two weeks to wait as they are committed to presenting an event for which millions of dollars of Federal liability hangs up.

Mr. Gross stated that they are not suggesting that testimony that was already given be given again. Mr. Gross stated that it has been discussed, but the two parties don't agree.

Mr. Irwin stated that the Sheriff did state in his After Action Report to BRC that he needed four investigators. He also clearly stated that he did not have the number of people needed to respond. When the budget was looked at the Board did not consider that that number was doubling or tripling. They looked at what the actual cost to sufficiently provide law enforcement at the event would be.

Mr. Shirley stated that from a litigation standpoint, once an objection is made regarding due process we have to present that evidence. Mr. Shirley also noted that BRC was also entitled to fifteen days written notice before the license hearing and a waiver should have been obtained. Mr. Allen stated that they did ask for the hearing to be held today.

Mr. Irwin recessed the meeting at 3:55 p.m. and it reconvened at 4:15 p.m.

Mr. Shirley stated that in discussion he doesn't believe BRC has objected to information given on prior record. Several hearings were held discussing what needed to happen with law enforcement at the event. At events occurring after October 1, 2012 the Board will be requiring one officer per 1,000 participants or one per 500 depending on the circumstances. Commissioner Irwin did elaborate on the prior discussions held in regards to Sheriff Machado's presentation of the level of staffing that is needed. If all this is considered as a whole, justification has been presented.

Mr. Shirley stated that the other issue that was raised was whether they go by the \$1 per day under the Ordinance or they go by the Law Enforcement costs. Mr. Shirley stated that this is something he is still grappling with and hasn't researched the issue.

Mr. Bloyed stated that he is not comfortable moving forward until the District Attorney has given them clarification. He would also like BRC to waive their objections.

Mr. Irwin had thought that after the last committee meeting that they would have reached a consensus and agreed upon conditions to present to the Commission. Mr. Bloyed stated that he thought they were there. He also stated that he hopes the amount does decrease and what isn't expended will be turned back to Burning Man.

Mr. Gross suggested that the Commission look at each monetary condition and vote on each one separately. Mr. Bloyed stated he isn't willing to move forward until BRC goes on record waiving their objections.

There was further discussion regarding the condition to include the Fire Chief in discussions regarding fire suppression. Mr. Gross stated that their issue was that it is double management and they already report to the BLM. Mr. Irwin stated that they are just asking for

him to be included in discussions. Mr. Allen stated that the Chief is more than welcome to come to the Cooperator's meeting, but they don't feel there needs to be a separate agreement.

Mr. Irwin asked for any additional public input and there was none.

Mr. Bloyed and Mr. Irwin both reiterated their willingness to expedite this process and make certain concessions. Mr. Irwin stated that he would like to see the payment schedule broke out in three payments, with the biggest payment being made before the event.

Mrs. Shank asked Mr. Shirley if he was comfortable with their legal position if the Board chooses to move forward. Mr. Shirley stated that he is still uncomfortable with whether or not this falls under the current Ordinance.

The Board recessed at 4:56 p.m. and reconvened at 5:09 p.m.

Mr. Gross stated that Mr. Shirley has proposed that the \$1.00 per day fee be reduced down to \$50,000.00 as BRC is required to pay for police protection. BRC is willing to agree to have this reduced to \$50,000 or even less if the Commission chooses. Mr. Shirley stated that the Ordinance states that the amount can be reduced if the applicant agrees based upon the fact that they are paying the cost of law enforcement.

There was discussion regarding the changes to the payment schedule. Mr. Irwin would like to see the first payment of \$200,000 made by June 20th, with the 2nd payment of \$200,000 due September 15th so that payroll for the event can be covered. At that point there would be a true-up as to the remaining balance or refund. Mr. Bloyed would still like to see the Law Enforcement costs paid up front. The Board agreed to make the second payment of \$200,000 due prior to the event.

Mr. Shirley read the changes to Condition #1 into the record as follows:

Black Rock City, LLC shall be required to pay a license fee of fifty thousand dollars pursuant to Pershing County Code 5.16.060 based upon an agreement between Black Rock City, LLC and the Board of Pershing County Commissioners to reduce the license fee from a dollar per day to a flat fee of fifty thousand dollars. The license fee expenditures are identified in Monetary Conditions 2, 3, and 4. Black Rock City shall also pay a fee for police protection under Pershing County Code 5.16.090 in the amount of \$398,326.75. The Pershing County Clerk-Treasurer will issue a license upon payment of 1/2 of the Law Enforcement costs in the amount of \$200,000.00 on or before June 20, 2012. The remainder of the Law Enforcement costs in the amount of \$198,236.75 must be paid on or before August 24, 2012.

The Monetary Conditions will be changed to reflect the changes to Condition #1. Mrs. Shank stated that a condition needs to be added that BRC will maintain the insurance provided in the application.

Mr. Bloyed made a motion to approve the Pershing County Outdoor Assembly License for Black Rock City, LLC for the 2012 Burning Man Event with the conditions as read into the record including Monetary Conditions 1-5 and adopting the related notes and definitions. Motion seconded by Mrs. Shank and passed unanimously.

PUBLIC INPUT: There was no additional public input.

As there was nothing further to come before the board the meeting was adjourned at 5:35 p.m.

Approved: _____

Pat Irwin, Chairman

Attest: _____

Lacey Donaldson, Clerk